

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

SHARONDA BELL,

Plaintiff,

v.

ADDUS HEALTHCARE, INC.,

Defendant.

CASE NO. C06-5188RJB

ORDER DENYING PLAINTIFF'S  
CROSS MOTION FOR CLASS  
CERTIFICATION UNDER FRCP  
23(c)(1)

This matter comes before the court on the Plaintiff's Cross Motion for Class Certification under FRCP 23(c)(1) (Dkt. 98) and Defendant's Motions to Strike Inadmissible Evidence (Dkt. 197). The court has considered the pleadings filed in support of and in opposition to the motions and the remainder of the file herein.

**I. FACTUAL BACKGROUND**

Plaintiff Sharonda Bell is a former employee of Defendant Addus Healthcare, Inc., ("Addus"). Dkt 134. The parties dispute Ms. Bell's dates of employment. According to Ms. Bell, her employment as a home care aide began in 2001 at Addus' Oregon office and, in 2002, she transferred to Addus' office in Vancouver, Washington, to work as an office assistant and care giver. Deposition of Sharonda Bell ("Bell Dep."), Dkt 130, Ex. #2 at 10. According to

1 Addus, Ms. Bell's employment as a home care aide began on July 18, 2002, in the Oregon office,  
2 and she was transferred to work as a home care aid and to occasionally work in the district office  
3 in Vancouver on June 21, 2003. Dkt. 76 at 3. It is undisputed that, in 2005, Addus terminated  
4 Ms. Bell in Washington after a background check revealed that Ms. Bell was disqualified from  
5 working for Addus under the rules of the Washington Department of Social and Health Services.  
6 Bell Dep. at 20-21.

7 Ms. Bell alleges that Addus' violated Washington and Oregon wage and hour laws. Dkt.  
8 1; Dkt. 98. Ms. Bell also alleges that Addus' violations affected many current and former  
9 employees of Addus. *Id.* During pre-certification discovery, Addus provided Ms. Bell with a list  
10 of current and former employees and Ms. Bell sent questionnaires to those employees. Dkt. 98 at  
11 11. On the questionnaires, Ms. Bell stated various Oregon and Washington wage and hour laws  
12 and asked each respondent whether he or she had received rest breaks, meal breaks, overtime pay,  
13 wages for all hours worked, and timely final paycheck. *See* Dkt. 103, Ex. B at 1 ("Wash.  
14 questionnaire"); Dkt. 103, Ex. C at 1 ("Or. questionnaire"). Ms. Bell contends that numerous  
15 current and former employees completed the questionnaires and returned them to Ms. Bell's  
16 counsel. Dkt. 103, ¶¶ 3-4.

## 17 18 **II. PROCEDURAL BACKGROUND**

19 On April 14, 2006, Plaintiff filed the complaint alleging that Defendant violated  
20 Washington and Oregon law by failing to provide rest breaks and meal periods, failing to pay  
21 overtime wages, failing to pay all wages when due upon termination, and breaching the duty of  
22 good faith and fair dealing. Dkt. 1. Plaintiff seeks damages in excess of five million dollars on  
23 behalf of herself and putative class members. *Id.* at 13, 25.

24 On February 22, 2007, Defendant filed a Motion for Order Under Fed. R. Civ. P. 23(d) in  
25 re Communication with Putative Class Members. Dkt. 93. In her response to that motion,  
26 Plaintiff moved for class certification "as to each and every claim contained in the complaint."  
27 Dkt. 98 at 10. The Court re-noted the Plaintiff's Cross Motion for Class Certification (Dkt. 98)

1 so that briefing on the motion would proceed in accordance with Local Rule CR 7. Dkt. 105.

2 Pursuant to the parties' joint request and in order to facilitate mediation, the Court stayed  
3 its ruling on the Plaintiff's motion. Dkt. 112. The Court re-noted the cross motion for class  
4 certification two more times and it was currently noted for September 28, 2007. Dkt. 162; Dkt.  
5 183.

6 On June 28, 2007, Addus filed a Motion for Summary Judgment. Dkt. 127. On August  
7 14, 2007, the Court issued an Order Granting in part and Denying in part Defendant's Motion for  
8 Summary Judgment (Dkt. 127). Dkt. 179. As a result of that order, Plaintiff has six remaining  
9 claims:

|    |                              |   |
|----|------------------------------|---|
| 10 | First Claim for Relief:      | Failure to Provide Rest Periods in Washington             |
| 11 | Fourth Claim for Relief:     | Failure to Pay Final Wages Upon Termination in Washington |
| 12 | Fifth Claim for Relief:      | Failure to Pay Overtime in Washington                     |
| 13 | Ninth Claim for Relief:      | Failure to Pay Overtime in Oregon                         |
| 14 | Tenth Claim for Relief:      | Failure to Pay Rest Periods in Oregon                     |
| 15 | Fourteenth Claim for Relief: | Failure to Pay Final Wages Upon Termination in Oregon.    |

17 *Id.*

18 In addition to the class certification briefings, both parties filed motions to strike. On  
19 August 27, 2007, the Court issued an Order Granting in part and Denying in part Defendant's  
20 Motions to Strike (Dkt. 134) and Denying Plaintiff's Motions to Strike (Dkt. 166). Dkt. 182. In  
21 that order, the Court granted Defendant's motion to strike certain portions of Plaintiff's  
22 Washington questionnaires. *Id.* Plaintiff sent more questionnaires to putative class members and  
23 included responses to the questionnaires in her supplemental class certification briefing. Dkt. 188.  
24 In its supplemental response brief, Defendant renewed its motion to strike (Dkt. 134) against both  
25 the original questionnaires (Dkt. 189) and the supplemental questionnaires (Dkt. 188). Dkt. 197.

26 Plaintiff's motion for class certification and Defendant's motion to strike are now ripe for  
27 decision.

### **III. DISCUSSION**

#### **A. Defendant's Motion to Strike Inadmissible Evidence.**

Defendant has previously argued (Dkt. 134), filed a motion for reconsideration (Dkt. 186), and currently maintains (Dkt. 197) that Plaintiff must meet her burden for class certification based on admissible evidence. As stated in the Court's order denying Defendant's motion for reconsideration (Dkt. 200), the authorities Defendant continues to cite are not binding on this Court and are factually distinguishable from this case. While it does not appear that the 9th Circuit has addressed this issue, class certification is not a dispositive motion that requires Plaintiff to submit admissible evidence in support of her arguments for certification. *Compare* Fed. R. Civ. P. 23 *with* Fed. R. Civ. P. 56. Moreover, the Court must rule on class certification as early as practicable and the Court retains authority to amend or decertify the class until the entry of final judgment on the merits. Fed. R. Civ. Pro. 23(c)(1). Thus, Fed. R. Civ. Pro. 23 does not require admissible evidence in support of a motion for class certification and the Court will not create that standard.

##### **1. Plaintiff's questionnaires**

Defendant argues that the questionnaires submitted by Plaintiff in support of her motion for class certification (Dkt. 189; Dkt. 188) are inadmissible evidence. Dkt. 197 at 18-19. Plaintiff sent the questionnaires to employees based on a list provided by Defendant in pre-certification discovery. Dkt. 166 at 17. Even though the employees who returned the questionnaires signed the document below the statement "I understand that [the questionnaire] may be used as evidence in court", Plaintiff redacted all identifying information from the majority of the questionnaires. *See e.g.* Dkt. 188-4 at 1. While identifying information may be required at a later point in this litigation to address the merits of claims for unpaid wages, the Court should not rule on the merits for purposes of class certification. *See* Fed. R. Civ. Pro. 23. Furthermore, assuming that the Court considers the substance of the questionnaires, Defendant's interests are sufficiently protected by the Federal Rules of Civil Procedure should Plaintiff's statements to the Court be

1 inaccurate or should the questionnaires be subsequently held to be inadmissible.

2 Therefore, the Court should deny Defendants' motion to strike the questionnaires  
3 submitted by Plaintiff.

## 4 5 **2. Declarations of Brandie James and Magaly Pruneda**

6 Defendant argues that portions of the Declarations of Brandie James (Dkt. 188-6) and  
7 Magaly Pruneda (Dkt. 188-8) should be stricken as inadmissible evidence because the Plaintiff has  
8 not set the proper foundation. Dkt. 197 at 19-20. In support of its argument, Defendant cites  
9 Fed. R. Civ. Pro. 602 and *Independent Living Resource v. Oregon Arena*, 982 F. Supp. 698, 784  
10 (D. Or. 1997).

11 First, even after denying Defendant's initial motion to strike and Defendant's motion for  
12 reconsideration of the denial of the motion to strike, the Court is still not persuaded that it must  
13 apply the traditional rules and procedures applicable to civil trials to the consideration of evidence  
14 in support of class certification.

15 Second, *Independent Living, supra*, is factually distinguishable from this case. In  
16 *Independent Living*, the court struck an affidavit that "contain[ed] mostly conclusions of law  
17 dressed up as 'facts' or the affiant's interpretation of documents that need no interpretation, or  
18 pure argument." *Independent Living*, 982 F. Supp. at 784. In this case, Ms. Pruneda's  
19 statements are not conclusions of law dressed up as facts or pure arguments.

20 Therefore, the Court should deny the Defendant's motion to strike the Declarations of  
21 Brandie James and Magaly Pruneda.

## 22 23 **B. Class Certification**

24 As a threshold matter, there is confusion as to exactly what Plaintiff has moved the Court  
25 to certify. Initially, "Plaintiff move[d] this court for an order certifying this lawsuit as a class  
26 action as to each and every claim contained in the complaint." Dkt. 98 at 10. Plaintiff's proposed  
27 order outlines each *claim* as a separate class. Dkt. 102. While Plaintiff does devote one page of  
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1 her final brief on the matter to the issue of subclasses (Dkt. 207 at 19), Plaintiff frequently  
2 mentions “every class” and separates argument sections in the briefs by referencing classes, not  
3 subclasses. *See* Dkt. 207. The inconsistent arguments of class structure are confusing and the  
4 Court is not sure whether Plaintiff has a comprehensive, discernable vision for how this lawsuit  
5 should proceed. Moreover, Plaintiff has prejudiced Defendant by raising the issue of subclasses in  
6 the final reply brief on this matter.

7 Furthermore, Plaintiff has proposed no plan for how to maintain this suit as six (originally  
8 seventeen) separate class actions based upon one class representative. Plaintiff offers no plan for  
9 how the case should proceed if the Court certifies some, but not all, of the proposed classes. In  
10 other words, as Defendant contends, “[c]ertifying the massive class that plaintiff seeks would  
11 create a case management nightmare.” Dkt. 197 at 50.

12 Finally, Plaintiff has had ample time and multiple opportunities to meet her burden. Based  
13 on the parties’ arguments and the original motion for class certification, the Court should consider  
14 the class certification requirements based on the motion to certify six separate classes relating to  
15 Plaintiff’s first, fourth, fifth, ninth, tenth, and fourteenth claims for relief, as set forth at page 3,  
16 *infra*.

### 17 18 **1. Legal Standard for Class Certification**

19 In considering certification, the court must apply each of the applicable requirements of  
20 Fed. R. Civ. P. 23. *Clark v. Watchie*, 513 F.2d 994, 1000 (9th Cir. 1975). Plaintiff bears the  
21 burden of proving that the proposed class satisfies these requirements. *See Hanon v.*  
22 *Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). First, Plaintiff must demonstrate  
23 numerosity, commonality, typicality, and adequacy of representation. Fed. R. Civ. P. 23(a),  
24 (“Rule 23(a)”). Second, Plaintiff must show that the proposed class action may be maintained.  
25 Fed. R. Civ. P. 23(b), (“Rule 23(b)”).

## 2. Burden of Proof

The parties dispute the Plaintiff's burden of proof for class certification. Plaintiff contends that, "[g]enerally, a well-pleaded complaint is sufficient to show that plaintiff meets all the certification requirements of [Fed. R. Civ. Pro. 23]." Dkt. 188 at 2 *citing* Newberg on Class Actions § 7:26 at 81 (4th ed. 2002) ("Newberg"). Defendant counters that Plaintiff cited to sections of Newberg referring "to very early, pre-discovery, prima facie showings of the purported class." Dkt. 197 at 16. While Newberg is instructive, plaintiff need not make an extensive evidentiary showing so long as the court is provided enough information to form a reasonable judgment on each certification requirement. *See Blackie v. Barrack*, 524 F.2d 891, 901 (9th Cir. 1975). The parties have engaged in pre-certification discovery and have developed the record for purposes of class certification. As a result, Plaintiff has provided the Court sufficient information for the Court to form a reasonable judgment on the requirements of class certification.

Although Plaintiff has failed to meet the requirement of maintainability under Rule 23(b), the Court will briefly discuss the requirements of Rule 23(a).

## 3. Class Certification Requirements Under Rule 23(a)

Plaintiff has moved the court to certify six separate classes. Dkt. 98 at 10. Plaintiff's arguments that the each proposed class meets the requirements of Rule 23(a) are confusing and structurally inconsistent. *See* Dkt. 98; Dkt. 166; Dkt. 188; Dkt. 207. For example, Plaintiff argues that each separate, proposed class meets the numerosity requirement, yet Plaintiff argues that, from a global standpoint, every class meets the other requirements of Rule 23(a). *Id.*

### a. Numerosity

Plaintiff must show the potential class is so numerous that joinder is impractical. Rule 23(a). "[I]mpracticability does not mean impossibility, but only the difficulty or inconvenience of joining all members of the class." *Harris v. Palm Springs Alpine Est., Inc.*, 329 F.2d 909, 913-14 (9th Cir. 1964).

1 Plaintiff contends that “courts have generally held that a class of 25 or more potential  
2 plaintiffs raises the presumption of numerosity.” Dkt. 98 at 11; Dkt. 188 at 4. While joinder of  
3 25 plaintiffs would not be impractical, Plaintiff claims that Defendant has more than 4,000  
4 employees throughout Washington and Oregon. *Id.* Thousands of putative class members who  
5 are geographically dispersed would presumptively meet the numerosity requirement. *See*  
6 *Kirkpatrick v. Ironwood Communications, Inc.*, 2006 U.S. Dist. LEXIS 57713, at \*10 (W.D.  
7 Wash. 2006).

8 Plaintiff has most likely met the requirement of numerosity for each proposed class.  
9

#### 10 **b. Common Questions of Law or Fact**

11 The second prong of Rule 23(a) requires evidence that the class members share  
12 common issues of law or fact. Rule 23(a)(2). This prong is construed permissively. *Hanlon v.*  
13 *Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). A common course of conduct against all  
14 class members satisfies the commonality requirement. *See Blackie*, 524 F.2d at 902.  
15 Commonality is satisfied even if there are common legal issues and diverging facts or a common  
16 core of facts and differing claims to relief. *Hanlon*, 524 F.2d at 902.

17 Plaintiff argues that Defendant has engaged in a common practice of violating wage and  
18 hour laws. Dkt. 188 at 12. Plaintiff, however, has failed to offer evidence of that common  
19 practice. Instead, Plaintiff submitted numerous anonymous questionnaires representing individual  
20 unpaid wage claims from current and former employees. The collection of alleged individual  
21 claims does not show or imply a common practice by the Defendant.

22 Plaintiff also lists 11 common issues of law and eight common questions of fact that  
23 supposedly apply to the six proposed classes. Dkt. 188 at 13. While this shotgun approach is  
24 confusing at best, there are most likely more uncommon than common issues of law and questions  
25 of fact that are relevant to thousands of putative class members’ unpaid wage claims.  
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27  
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1                   **c. Typicality**

2           The typicality requirement is fulfilled if the plaintiffs' claims or defenses are typical of the  
3 class as a whole. Rule 23(a)(3). This rule is permissive and requires that the plaintiff's claims be  
4 reasonably co-extensive with, not substantially identical to, those of absent class members.  
5 *Hanlon*, 150 F.3d at 1020.

6           Plaintiff again relies on the implication of Defendant's consistent wage and hour violations  
7 to meet the requirement of typicality. *See* Dkt. 188 at 14; Dkt. 207 at 16-17. Yet Plaintiff has  
8 failed to show how her unpaid wage claim is reasonably co-extensive with any other putative class  
9 member's unpaid wage claim. For instance, if Plaintiff won a favorable verdict on her unpaid  
10 wage claim, any other putative class member would not necessarily benefit from this result  
11 because of the individual nature of Plaintiff's specific job, hours worked, and conduct during work  
12 hours.

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14                   **d. Adequacy**

15           The representative parties adequately represent the class only if they have no conflicts of  
16 interest with other members and the named plaintiffs and their counsel will prosecute the action  
17 vigorously on behalf of the class. *Hanlon*, 150 F.3d at 1020.

18           Defendant contends that Plaintiff is inadequate to represent the proposed classes because  
19 she lacks both credibility and knowledge of the nature of this action. Dkt. 197 at 42. While there  
20 may be issues with Plaintiff's credibility, the main issues of adequacy arise from the confusing  
21 nature of the proposed litigation. As previously mentioned, Plaintiff has not provided a consistent  
22 framework for the proposed class structure, has not independently argued for each proposed  
23 class, and has not presented a clear vision for how this litigation should proceed.

1           **4. Maintainability Under Rule 23(b)**

2           Plaintiff contends that every proposed class is maintainable under all three subsections of  
3 Rule 23(b). Dkt. 98 at 27-32. Plaintiff must only meet one of these requirements. *See* Rule  
4 23(b).

5  
6           **a. Rule 23(b)(1)**

7           Litigation is maintainable as a class action if prosecution of individual suits would create a  
8 risk of either of the following:

9           (A) inconsistent or varying adjudications with respect to individual members of the class  
10 which would establish incompatible standards of conduct for the party opposing the class,  
or

11           (B) adjudications with respect to individual members of the class which would as a  
12 practical matter be dispositive of the interests of the other members not parties to the  
adjudications or substantially impair or impede their ability to protect their interests. . . .

13 Rule 23(b)(1).

14           Defendant argues that Plaintiff has provided no evidence that there exists a realistic  
15 possibility that putative class members would file separate suits related to these wage and hour  
16 claims. Dkt. 197 at 45. Plaintiff admits in her complaint that; “no single class member has the  
17 interest or incentive to individually control the prosecution of separate actions. . .” Dkt. 1 at  
18 ¶9(a). More importantly, Plaintiff has submitted redacted questionnaires alleging unpaid wage  
19 claims against Defendant. *See* Wash. and Or. questionnaires. While it may be that current  
20 employees fear retaliation by the Defendant employer, the anonymous questionnaires do not show  
21 that other potential plaintiffs would pursue individual actions related to claims for unpaid wages.

22           Plaintiff also contends that the proposed classes are maintainable because “[t]he suit  
23 challenges the conduct or practices of defendants who are required by law or by practical  
24 circumstances to deal with all putative class members in the same way.” *citing* Newberg § 4:7, at  
25 26; Dkt. 188 at 16-17. Plaintiff argues that Defendant is required to comply with the wage and  
26 hour laws for every employee and, therefore, must treat every putative class member in the  
27 identical manner. Dkt. 188 at 16. Plaintiff, however, fails to address how separate adjudications  
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1 requiring Defendant to comply with wage and hour laws would result in “incompatible standards  
2 of conduct” for Defendant. Instead, Plaintiff merely concludes that “[i]f each [employee] brought  
3 a separate case, in different jurisdictions, it would inevitably lead to inconsistent adjudications.”  
4 Dkt. 188 at 16. In other words, Plaintiff essentially argues that if some employees brought and  
5 won unpaid wage claims but other employees lost their unpaid wage claims, then those opposing  
6 results would create an inconsistent standard for Defendant. These unpaid wage claims are  
7 largely fact-dependant. Plaintiff has failed to show how the individual nature of a putative class  
8 member’s wage claim would conflict with the Defendant’s payments of its employees in  
9 accordance with wage and hour laws.

10 Plaintiff has failed to show that the proposed classes are maintainable under Rule 23(b)(1).  
11

12 **b. Rule 23(b)(2)**

13 A suit is maintainable as a class action if “the party opposing the class has acted or refused  
14 to act on grounds generally applicable to the class, thereby making appropriate final injunctive  
15 relief or corresponding declaratory relief with respect to the class as a whole.” Rule 23(b)(2).

16 Plaintiff originally argued that the class was maintainable under Rule 23(b)(2). Dkt. 98 at  
17 28. Although Plaintiff did not address this argument in any of her three subsequent briefs,  
18 Plaintiff has not conceded it. Dkt. 166; Dkt. 188; Dkt. 207. The Court, however, granted  
19 Defendant’s motion for summary judgment on Plaintiff’s claims for injunctive relief. Dkt. 179. In  
20 addition, Plaintiff lacks standing for declaratory relief because Defendant terminated Plaintiff in  
21 2005. Bell Dep. at 20-21.

22 Plaintiff has failed to show that Defendant acted or refused to act on grounds generally  
23 applicable to each proposed class. Therefore, the proposed classes are not maintainable under  
24 Rule 23(b)(2).  
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1                   **c. Rule 23(b)(3)**

2           A suit is maintainable as a class action if “the questions of law or fact common to the  
3 members of the class predominate over any questions affecting only individual members, and [] a  
4 class action is superior to other available methods for the fair and efficient adjudication of the  
5 controversy.” Rule 23(b)(3). In making this finding, the court considers the following:

6           (A) the interest of members of the class in individually controlling the prosecution or  
7 defense of separate actions; (B) the extent and nature of any litigation concerning the  
8 controversy already commenced by or against members of the class; (C) the desirability or  
undesirability of concentrating the litigation of the claims in the particular forum; (D) the  
difficulties likely to be encountered in the management of a class action.

9 *Id.* Predominance and superiority ensure that class treatment will "achieve economies of time,  
10 effort, and expense, and promote . . . uniformity of decision as to persons similarly situated,  
11 without sacrificing procedural fairness or bringing about other undesirable results." *Amchem*  
12 *Prods., Inc. v. Windsor*, 521 U.S. 591, 615 (1997) (quoting Fed. R. Civ. P. 23 advisory  
13 committee's notes (1966)).

14           Plaintiff has failed to show that common issues predominate over other questions in this  
15 litigation and, therefore, the Court should not reach the issue of superiority.

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17                   **1. Predominance**

18           “Implicit in the satisfaction of the predominance test is the notion that the adjudication of  
19 common issues will help achieve judicial economy.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d  
20 1227, 1234 (9th Cir. 1996).

21           Plaintiff advances three arguments for why common issues predominate: (1) Defendant  
22 operates its business using standardized practices and procedures, (2) hourly employees perform  
23 the same range of duties: care for the elderly or infirm, both in the field and in the office, and (3)  
24 Defendant consistently violates state wage and hour statutes to keep employee work hours low  
25 and profit margins high. Dkt 188 at 16.

26           First, Plaintiff has not produced evidence of a standardized practice or procedure. Plaintiff  
27 has produced numerous anonymous questionnaires that allege unpaid wage claims by Defendant’s  
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1 current and former employees. *See* Wash. and Or. questionnaires. While Plaintiff argues that  
2 these questionnaires imply Defendant has a common practice of wage and hour violations, the  
3 documents present only varying, individualized issues. Moreover, because the questionnaires are  
4 anonymous, Plaintiff has failed to show whether Defendant's alleged violations stem from one  
5 local office or if they are geographically widespread throughout Washington and Oregon.

6       Second, Plaintiff has failed to show how the employees' common duties create issues that  
7 predominate in this litigation. Plaintiff again attempts to imply that Defendant instituted a  
8 common practice of wage and hour violations based on specific job requirements. While an  
9 employee may have to constantly attend to his or her patient, this does not necessarily mean that  
10 Defendant required every employee to forego meal periods or rest breaks. Additionally, the job  
11 duties do not guarantee that every employee worked the prerequisite time to qualify for a meal  
12 period or rest break. Regardless of the job duties, it is important to note that, in making this  
13 argument, Plaintiff delineates another set of individual issues by separating office employees from  
14 field employees.

15       Finally, Plaintiff's contention that Defendant's consistent violations keep employee work  
16 hours low and profit margins high is conclusory and not relevant to the analysis of whether  
17 common issue predominate in this litigation.

18       Therefore, the Court should not grant Plaintiff's motion for class certification because  
19 Plaintiff has failed to show that common issues predominate this litigation.

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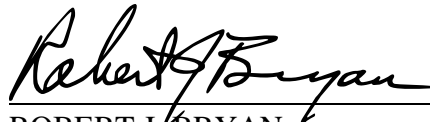
**IV. ORDER**

Therefore, it is hereby

**ORDERED** that the Plaintiff's Cross Motion for Class Certification Under FRCP 23(c)(1) (Dkt. 98) is **DENIED**. The Court will issue a modified Minute Order Regarding Joint Status Report (*See e.g.* Dkt. 2).

The Clerk of the Court is instructed to send uncertified copies of this Order to all counsel of record and to any party appearing pro se at said party's last known address.

DATED this 12<sup>th</sup> day of October, 2007.

  
ROBERT J. BRYAN  
United States District Judge